

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

LIGHTHOUSE FELLOWSHIP CHURCH,)	
)	
Plaintiff,)	Civil Action No. 2:20-cv-00204-AWA-RJK
)	
v.)	
)	
RALPH NORTHAM, GOVERNOR,)	
)	
Defendant.)	

**DEFENDANT’S NOTICE OF
ISSUANCE OF EXECUTIVE ORDER 61 AND
ORDER OF PUBLIC HEALTH EMERGENCY THREE**

Defendant submits this notice to alert the Court to the issuance of a new Executive Order, which amends the Executive Orders challenged in this case. Yesterday, in conjunction with State Health Commissioner M. Norman Oliver, the Governor issued Executive Order 61 and Order of Public Health Emergency Three, *Phase One Easing of Certain Temporary Restrictions Due to Novel Coronavirus* (May 8, 2020) (EO 61) (attached as Exhibit 1).

EO 61 reiterates that the restrictions imposed in prior Orders, including the prohibition on gatherings of more than ten people, were designed “to slow the spread of [COVID-19]” and “were necessary to save lives.” EO 61, p. 1. These measures “lowered transmission rates” and “also prevented [Virginia’s] healthcare systems from being overwhelmed—affording . . . healthcare systems and healthcare providers time to acquire the tools and resources necessary to respond to the virus.” *Id.*

EO 61 explains that, because the “efforts and sacrifices” undertaken “seem to have slowed the spread of the virus,” the time has come to “set the path forward” by “eas[ing] some of the restrictions.” EO 61, p. 2. The Order stresses, however, that “[t]he path forward will not be

business as usual,” that “the virus . . . is still present,” and that Virginians must “remain vigilant, cautious, and measured” in the next phase of the response. *Id.*

EO 61 specifically states that it “amends Executive Order 55.” EO 61, p. 10. Among other changes, EO 61 modifies the temporary gatherings restriction as it applies to “religious services.” *Id.* at 7. Beginning on Friday, May 15, 2020—six days from today—“individuals may attend religious services” in groups larger than ten so long as such services are “limited to no more than 50% of the lowest occupancy load on the certificate of occupancy of the room or facility in which the religious services are conducted” and various other social-distancing and hygiene requirements are followed. *Id.* at 7–8.

Lighthouse alleges that its “church building has a total occupancy limit of 293 individuals” based on the building’s “fire inspection,” and that the “sanctuary where its worship services are held typically seats approximately 225 persons.” Compl. ¶ 55. To the extent these allegations accurately reflect “the lowest occupancy load on the certificate of occupancy of the room or facility in which the religious services are conducted,” EO 61, p. 7, nothing in EO 61 (or EO 55 as amended) will prohibit Lighthouse’s members from attending in-person religious services with more than 100 individuals present as of next Friday, May 15, 2020, provided everyone in attendance complies with EO 61’s additional requirements. With respect to the six days until Friday, May 15, the Court should deny plaintiff’s motion for the reasons articulated in defendant’s Memorandum in Opposition. See Dkt. 36.

Respectfully submitted,

RALPH NORTHAM

By: /s/ Toby J. Heytens

Toby J. Heytens

Counsel for Defendant

Mark R. Herring

Attorney General

Erin B. Ashwell (VSB No. 79538)

Chief Deputy Attorney General

Victoria N. Pearson (VSB No. 48648)

Samuel T. Towell (VSB No. 71512)

Deputy Attorneys General

Jacqueline C. Hedblom (VSB No. 68234)

Assistant Attorney General

Toby J. Heytens (VSB No. 90788)

Solicitor General

Michelle S. Kallen (VSB No. 93286)

Martine E. Cicconi (VSB No. 94542)

Deputy Solicitors General

Jessica Merry Samuels (VSB No. 89537)

Assistant Solicitor General

Zachary R. Glubiak (VSB No. 93984)

John Marshall Fellow

Office of the Attorney General

202 North Ninth Street

Richmond, Virginia 23219

(804) 786-7240 – Telephone

(804) 371-0200 – Facsimile

solicitorgeneral@oag.state.va.us

CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2020, a true and accurate copy of this paper was filed electronically with the Court's CM/ECF system, which will then send a notification of such filing to the parties.

By: /s/ Toby J. Heytens
Toby J. Heytens